

**MINUTES**  
**WARRICK COUNTY AREA PLAN COMMISSION**  
Regular meeting held in Commissioners Meeting Room  
Third Floor, Historic Court House  
Boonville, IN  
Monday, November 14, 2011, 6:00 P.M.

**PLEDGE OF ALLEGIANCE:** A moment of silence was held followed by the Pledge of Allegiance.

**MEMBERS PRESENT:** Guy Gentry, President; Larry Willis, Vice-President; Brad Overton (arrived at 6:15), Marlin Weisheit, Amanda Mosiman and Mike Moesner.

Also present were Morrie Doll, Attorney; Sherri Rector, Executive Director and Sheila Lacer, staff.

**MEMBERS ABSENT:** Judy Writsel.

The Executive Director stated that it will take a majority of the Board, four members, to pass any application.

**MINUTES:** Upon a motion made by Larry Willis and seconded by Amanda Mosiman, the Minutes of the last regular meeting held October 10, 2011, were approved as circulated.

**RESOLUTIONS:**

Resolution 2011-07 – Resolution amending Northwest Economic Development Plan

The President asked for Attorney Doll to bring the Board up to speed on what needs to occur next on this.

Attorney Doll stated that the process of Roberts Rules of Order was that the motion was brought up; a motion was made and the motion was defeated; the resolution was defeated. He stated if they are going to reconsider it tonight that someone who voted in the majority, and there were three who voted in the majority (which only two present at this meeting) needs to make a motion to reconsider the resolution which would then put it back before the Board again. He stated further that that motion needs to be seconded and passed by a majority to place it back on the agenda.

Tom Kimpel, Attorney for Economic Development, stated that from what the Executive Director just said, he thought for this Board to take any action it takes four votes for it to be and action.

Attorney Doll stated it does.

Attorney Kimpel stated that it's his understanding that at last month's meeting the vote was three to two.

Attorney Doll stated that it takes four tonight.

Mrs. Rector stated it takes four anytime to pass or deny anything.

Attorney Doll stated that it didn't pass.

Attorney Kimpel stated and it didn't get denied.

Attorney Doll stated that you are correct.

Attorney Kimpel stated that he thought it was no official action. He continued that therefore, there was no official action so it automatically carried over.

Attorney Doll asked for staff to check the minutes and tell him what it was.

Mrs. Rector stated it was three to two.

Guy Gentry stated that he made the comment that it would go to the Commissioners (with no recommendation) and he was told no it wouldn't. He said that he was assuming it was like a regular ordinance.

Attorney Doll stated that Attorney Kimpel is correct; there was no action.

The President then asked if in that case there is no need for a vote on bringing it back on the Agenda to be considered to which Attorney Doll stated true.

The President asked the representative to state their names for the record.

Tom Kimpel stated he is the Attorney representing the Warrick County Economic Redevelopment Commission.

The President asked for a staff report.

Mrs. Rector stated she is only to say what she did at the last meeting, she is leaving it up to the attorneys to explain; that she doesn't have any additional information to add. She then said that Sheila had failed to get the Resolutions in the Members packets and has gone down to the office to get them.

The President then asked Attorney Kimpel if he minds if the Board goes on with the next item on the Agenda until we get the Resolutions to which he stated he did not.

### **REZONING PETITIONS:**

**PC-R-11-10 – Petition of Lamar Outdoor Advertising, S. Carter Clark VPGM. OWNERS: Marcus O. & Janice E. Miller, by S. Carter Clark, POA.** To rezone Lot 79 in Triple Crown Estates as recorded in Plat File 1 Card 181 in the Office of the Warrick County Recorder located

on the S side of SR 66 approximately 0' E of the intersection formed by SR 66 & Triple Crown Dr. from "C-1" Neighborhood Commercial to "C-3" Highway Commercial with a Use and Development Commitment. *Advertised in the Boonville Standard November 3, 2011.*

S. Carter Clark was present.

The President called for a staff report.

Mrs. Rector stated they have submitted all the return receipts from certified mail of notice of this meeting to the adjacent property owners. She explained that the owners, Marcus & Janice Miller have given S. Carter Clark a recorded POA to represent them in this rezoning. She said this is a request to rezone this lot from "C-1" Neighborhood Commercial to "C-3" Highway Commercial with a Use and Development Commitment. She said the Use and Development Commitment limits the use of the real estate to a real estate office with an off premise sign. She commented this property has a billboard that was permitted prior to the sign ordinance going into effect and added they filed for a Special Use to allow the billboard to have an electronic message board. She said it was determined that they were pre-existing, non-conforming and they could not change the existing billboard unless the property was rezoned, which is why they have filed this application. Mrs. Rector stated this lot is approximately 1.5 acres and the Comprehensive Plan projects the property along the highway to be commercial. She commented the property is currently a Real Estate Office and the property to the north is zoned "C-4" General Commercial (Bellmoore Landing); to the east and west is "C-1" Neighborhood Commercial (Triple Crown Estates) and to the south is "R-3" Resort (Triple Crown Estates). She said there is no flood plain on the property and it fronts on SR 66 but has a driveway off Triple Crown Drive. She stated the applicants' stated use for the property is a real estate office and off premise sign which is allowed in the proposed zoning. She further added they have submitted a letter requesting the Board amend their Rules of Procedure and send this rezoning to the Commissioners on November 28<sup>th</sup> instead of December 12<sup>th</sup>. She said the reason for this request is because they are on the BZA agenda November 28<sup>th</sup> and this would give the Commissioners the opportunity to either approve or deny the rezoning before they go back to the Board of Zoning Appeals. She said if they have to wait for the December 12<sup>th</sup> meeting they won't be able to go before the BZA until December 19<sup>th</sup>. She stated the application is in order.

Mr. Clark stated they are not enlarging the sign, they are actually reducing it. He said several of the same members were present when they presented this about a month ago and were almost to a motion to approve but there was some concern by Mr. Doll regarding another case involving the Cracker Barrel and after discussion they moved on and it was decided this was the best option to go to rezoning. He stated they were worried about the neighbors and opening up a flood plain of going to a larger zoning and so they put the stipulation in there and he thinks that protects the neighborhood from all the other uses that could come in within a "C-3" zoning. He stated so they are asking for this rezoning.

Mrs. Rector stated she wants to inform the members who weren't present when this was before the Board of Zoning Appeals, when they amended the zoning ordinance it did not allow off premise signs in a "C-1" Neighborhood Commercial zoning, it has to be a higher zoning and that is why they are rezoning to "C-3" Neighborhood Commercial. She stated the Use and Development Commitment they have provided does limit this to exactly what is there now.

Ascertaining there were no questions from the Board and being no remonstrators present, the President called for a motion.

Mike Moesner made a motion to amend the Rules of Procedure and forward PC-R-11-10 with a recommendation of approval to the County Commissioners on November 28, 2011. The motion was seconded by Larry Willis and unanimously carried.

### **RESOLUTIONS:**

#### Resolution 2011-07 – Resolution amending Northwest Economic Development Plan

The President stated they would continue with the Resolution and asked Larry Taylor to speak.

Larry Taylor stated he felt like maybe they didn't explain this well last time and one thing about this is it is a new State Statute that puts a step in the process where they amend the plan that brings it in front of the Area Plan Commission. He stated that went into effect a couple of years ago and so last year was the first full year it was in effect. He stated that is why they are here because it has to go in front of this Board before it gets transferred to the Commissioners. Mr. Taylor stated historically any of the projects in this area have been fully supported by the Commissioners and certainly it has been supported by the County Council to the tune of some \$8 million so far. He stated it is an investment to encourage development in that area. He stated the vote they are asking for is not necessarily do you agree with TIF's or anything that has to do with that, what the vote is does this action conform with the Comprehensive Plan that is in place. He stated it is their thought that it does because there is no change in the projects or the area that was approved by this Board two years ago so it is basically the same TIF area, it is for economic development within that industrial park up there. He stated the other thing he wants to clarify is this allows the revenue that is generated in the area to be used to fund necessary infrastructure improvements; so versus the entire County tax base having to fund those improvements what this does is take only the incremental investment and allows that revenue to fund additional improvements versus the total County. He added likewise, there were also some questions about not wanting the money coming out of that township; this actually insures that the money stays in that township because it insures the revenue generated is actually invested right back into that TIF area which is in that township. He stated it could support the exit for I-69 or it could fund numerous things. He stated there are additional infrastructure expenditures that are going to be needed in that area. Mr. Taylor stated one is a sewer line that is 90% engineered and ready to go, so when it comes time to actually put that sewer in the ground it will require more funds than are available which then the County will have to do some kind of bond issue or something to that in place. He stated what this does is it gives them a revenue stream so it puts that TIF area on the hook for that bond and it certainly will require some kind of County back up but yet it still creates revenue stream that can be bonded to do the improvements that are going to benefit that area. He stated that is all they are trying to do and as he understands it the vote they are trying to get is if it conforms to the Comprehensive Plan and they believe it does.

Tom Kimpel, Attorney for Redevelopment Commission, stated the only thing he would add is the specific project here is capturing the personal property tax off the North American Lighting

that is currently under construction at the park. He stated part of the County incentives that were offered to them was to give them some tax phase ins and some other incentives. He stated now they have an opportunity with them going in to capture the personal property tax off that new equipment so they can continue to build out that park. He said all they are asking is to capture the personal property tax and continue with that project up there.

Guy Gentry asked how many tax dollars are they talking about.

Tom Kimpel stated he isn't real sure what that rate is.

Larry Willis asked if they don't know what the rate is and they don't know the revenue stream is going to be, how can they do any planning on what they can spend.

Larry Taylor stated they do know that exactly but he doesn't have it with him right now.

Tom Kimpel stated the accounting firm did all of the calculations for them.

Larry Willis stated he thinks that would have been something nice for them to share with them.

Tom Kimpel stated here again it is not so much the tax dollars; this body looks at does this plan conform to the Comprehensive Plan. He stated they are a planning body not the fiscal body like the County Council.

Larry Willis stated he understands that but their decision does make a difference, as he understands it, whether they get the money or not.

Guy Gentry stated the Comprehensive Plan doesn't address personal property whether that is part of it or not and their opinion may be that this does comply where if it isn't addressed, his opinion may be that it doesn't comply.

The President stated for the record that Brad Overton is now present and there are six members present.

Marlin Weisheit stated he hasn't changed his opinion from last month and from a Commissioners standpoint they want to promote economic development and they want to see that park grow and there are a lot of things that need to happen up there. He said with this being the first company to move in there, and they want to see others move in there, it is going to take a lot of things to be accomplished to see that. He stated he hasn't changed his mind and he is even more committed to it than he was last month. He said Commissioner Don Williams is present this evening and they may want to allow him to speak as well.

Don Williams thanked the Board to allow him to speak. He said the Board of Commissioners is very much in support of this and wants to remind them that any TIF area has a limited lifetime and the objective is to build up the TIF areas and get them built out and once they are built out it is turned over to the County for normal taxes. He stated the question is and he realizes tonight their point is to either say that this is in compliance with the plan or it is not. He stated that area

is an industrial park and he sees no way, at least in a common sense way, that it could be disapproved. He said when it comes to the funding the bottom line is where does it come from, does it come out of the whole County's pocket or does it come out of North American Lighting's pocket. He stated personally he would like to see it come out of the TIF funds and get that part built out; use all that money to put in the infrastructure that has to go in there to bring different industries in. He said ten years ago the County Council committed to doing exactly what is going on up there and they have always been supportive or they wouldn't be where they are today. Mr. Williams stated he would ask they vote in the affirmative and approve this is in compliance with the plan.

Larry Taylor reiterated his previous statements for Mr. Overton. He then explained the boundaries of the TIF area. He commented the township is benefitting greatly from this because they have ran a water line through there with County funds and there is additional extensions to that water line that wouldn't be in place otherwise. He stated they have also funded some improvements to the sewer plant up there. He stated there are other investments that need to be made in this area and they are trying to get this TIF area to stand on its own.

Discussion ensued this was only capturing the personal property taxes for North American Lighting and they would have to repeat this procedure again for any other business. It was also discussed the funds can be used anywhere in this TIF district, not just in the industrial park.

Tom Kimpel commented when the sewer project is built it will open up that whole area for development.

Larry Willis asked if the waste water treatment plant that is in place now be able to handle the new sewer lines.

Larry Taylor stated the plant has a limited capacity and they have enough capacity for one or two more businesses. He said the project that is underway is to build a pipeline that ties into the Evansville Sewer and Water system and the sewage will go down by the Vanderburgh Industrial Park. He stated that will open up the whole corridor for development. He said the reason they are going into the Vanderburgh system is because it is a much larger system and can handle industrial users. He said there was an inner local agreement that has been signed and the engineering work is 90% complete. He said it is mostly gravity fed line and will benefit the whole area.

Discussion ensued that each individual property has to be addressed to capture the personal property taxes per State Statute.

Marlin Weisheit said to give them credit they have done a good job there and recruited businesses to the County and others they are trying to recruit and this just helps them do their job.

Larry Willis asked if they feel they are good stewards of this money to which Mr. Taylor stated he thinks they are and he looks at personally if it were his own money and he thinks the Board members do the same and want things done properly. He said they are a pretty business pro-

active Board and they are big on doing investments that benefit the whole area and doing things right.

Larry Willis stated in looking at the \$14 million of tax base it looks like they will have about \$300,000 or so of generated funds.

Larry Taylor said when he asked that question earlier the number that popped into his mind was \$286,000 but he doesn't have the exact number.

Further discussion ensued over the proposed sewer expansion.

Larry Willis asked why the State Legislature made this come back to the Area Plan Commission.

Larry Taylor stated because there are several Counties in northern Indiana that aren't as fiscally prudent as Warrick County is. He stated the TIF revenue is a big chunk of money and everybody was looking at the chunks and at the end of the day there wasn't enough for anybody.

Brad Overton asked if something goes haywire with County funding – is there anything in place that would allow this to roll back.

Larry Taylor said every year ...the check valve is on approving the projects that are being done. He said if there is a project and a commitment out there, every year you have to go in and say if there is a valid use for the funds being collected. He said if there is not a valid use that fits within the plan then the requirement is those funds go back to County General.

Brad Overton said then there is no way for these funds to be surrendered back to County General outside of the Redevelopment Commission.

Larry Taylor stated they are appointed by the Council and Commissioners.

Brad Overton said he understands that but when they discuss worse case scenarios and people who aren't prudent with their funds – believe him he isn't trying to direct this to him but his question is if something did happen and they needed to recapture some of this money back is there a way...

Larry Taylor stated he would think that in that scenario the County Council and the Commissioners would come to the Redevelopment Commission and say hey, we are out of money here and they don't want them to do any more projects and he is sure....

Several members spoke at once and then Tom Kimpel stated the Redevelopment Commission has to annually hold a public meeting and go through the analysis and they utilize a financial advisor and everything to see what the projects are and what their loan commitments are and if there is excess increment or not.

Brad Overton stated it wouldn't do the Redevelopment Commission any good if they let the rest of the County fall into a sink hole.

Larry Taylor stated the Redevelopment Commission just returned \$280,000 back on a prior commitment to the EDIT Funds. He stated there is no statute that says they have to do that but the Redevelopment Commission made the commitment on the funding. He stated they only have one loan right now on the Epworth Road TIF area.

Discussion ensued over the projected cost of the sewer project. It was also discussed what projects were needed in the area being wetlands, sewers and grading. It was also discussed how long the TIF district lasts and how many years it has been running. Discussion was held about tax phase in and the amount of revenue that may be generated.

Attorney Doll stated this is the first time they have come back and asked for the personal property taxes to be tagged to the TIF and asked if that is something they intend to do in the other two districts.

Larry Taylor said not initially. He stated this is kind of a different project because the majority of the investment is in the machining not the property. He said most others are not like that and he doesn't think he would do this for the less personal property.

Larry Willis asked if this is 100% or can they share say 80% /20% with the County.

Larry Taylor stated he believes this action would be 100% but there is always the opportunity they could go in and say there is this much TIF revenue being generated and they only need this much to take care of the projects , so yes conceivably they could do that but this action is saying 100%. He said the only way they could do less than a 100% is every year look at it and say do you have projects for the revenue being generated that fits the plan and if they say no then they would have to send it back to the County.

Attorney Doll said he thinks they can say that in the amendment to the plan that revenue from this source will be shared between the General Fund of Warrick County and the TIF District on these percentages. He said he doesn't know of anything in the State Statutes that precludes them from doing that.

Tom Kimpel stated he thinks this is to designate it to capture it and he thinks just off the top his head the Redevelopment Commission would then on its own pass a resolution agreeing to pass 20% through annually.

Attorney Doll said what he is saying is he thinks if the resolution says the TIF District shall capture 50% (using an example) of the personal property tax generated by this industry at this location he thinks that is what gets captured not 100%. He said the remaining portion goes to the General Fund.

Amanda Mosiman said that would be between them, the Council and Commissioners; this Board is just to determine if it meets with the Comprehensive Plan.



Attorney Doll stated State Statute requires it to come to them in conformity to the plan of development for the County. He said the County's Comprehensive Plan doesn't talk about shared taxes or property taxes.

Amanda Mosiman said she understands and she sees why he saying they can do this she is just asking if it can be done tonight.

Larry Taylor stated they don't know if they can do that without researching it.

Tom Kimpel stated they have never captured personal property tax and so he can't say yes or no and he knows that everything dealing with TIFs are unique.

Attorney Doll asked if the hospitals are exempt from paying property taxes.

Larry Taylor some of them are; there is a very stringent regulation that says the portion that used not to support in patient care can be taxable. He stated they just re-looked at that with the County Assessor and now have an exact chart that says what is accessible and what is not.

Attorney Doll stated the County gets the taxes for the non in patient care personal property and asked if that is something they plan on amending for the medical TIF district down the road.

Larry Taylor stated he won't say never, but they don't anticipate that.

Tom Kimpel stated it would only be on new increments – they can't go back and capture and so if Deaconess were to build a \$200 million addition that would have \$300 million of personal property that would be all for profit they could maybe capture that but they can't go back.

Attorney Doll commented that St. Mary's is now pushing on their development across the highway from Deaconess and they are going to start mostly with out patient services and then at some point go to a full in-patient hospital.

Larry Taylor said they would certainly look at that and make a recommendation.

Tom Kimpel stated right now the real estate taxes are sufficient to pay for the improvements in that area.

Brad Overton said if they could draw this up for a 50/50 split he would support it.

Marlin Weisheit stated he would like to see it go 100% on this project.

Attorney Doll stated he and Attorney Kimpel could look at that. He stated they have several options this evening; they could either deal with it as it is, table it and have the attorneys research it and present their responses next month and then deal with it.

Mrs. Rector stated so Mr. Overton could make a motion if he wants them to look into it and continue it to next month.

Attorney Doll stated it would be a tabling motion subject to further research to answer that specific question.

The President asked if there were any motions.

Brad Overton made a motion to table this for further discussion and review in regards to the 50/50 possibility.

The President called for a motion.

Larry Willis stated he doesn't know about the 50/50 on Brad's motion but he would like to know whether the attorneys could get together and see if there is a possibility of doing that or not.

Brad Overton stated he shouldn't have made it specific to 50%.

Attorney Doll stated so he wants to table it for a revenue sharing possibility not a specific percentage.

Larry Willis commented he likes what is happening up there but just for down the road knowledge he thinks it should be investigated and he seconded the motion if it is just to have the attorneys see if it could be done or not.

The President called for a vote. Brad Overton, Larry Willis and Marlin Weisheit voted for the motion and Mike Moesner, Guy Gentry and Amanda Mosiman voted against the motion; therefore it did not carry.

The President called for another motion.

Marlin Weisheit made a motion to approve Resolution 2011-07 as presented and it conforms to the Comprehensive Plan. The motion was seconded by Mike Moesner.

Guy Gentry stated he wants to go on record that he is very supportive of Economic Development in Warrick County and he thinks the Statute has its head up its rear end when they brought this to the Plan Commission because this has absolutely nothing to do with Plan Commission. He said he understands his vote needs to be not based on that; however he cannot help that. He said he wants no part of a percentage – this Board has nothing to do with designating that, it is the County Council the fiscal body of the County. He said somebody needs to pressure the legislature to take this back and get it done correctly. Mr. Gentry stated his vote will always be as long as the Comprehensive Plan doesn't address anything is that is does not comply and there is where he stands. He then called for a vote.

Guy Gentry and Brad Overton voted against the motion and the remaining Board members voted for the motion; therefore the motion carried with a 4:2 vote.

Discussion ensued over the written Resolution.

Guy Gentry stated he won't sign it because he voted against it.

Attorney Kimpel stated it could be signed by the members who voted for it.

Mrs. Rector stated it only has the presiding officer and secretary signature blocks on what is prepared.

Attorney Doll stated the Statute says the Plan Commission shall present its written order approving or disapproving the resolution. He stated again, the legislature doesn't understand, the Plan Commission doesn't issue orders.

Tom Kimpel stated the document is written as a resolution.

Attorney Doll said not an order and he isn't trying to be nitpicky but he just wants to be sure it is right.

Tom Kimpel stated this is the exact same resolution that was passed two years ago.

Attorney Doll stated he doesn't know how much of this language is new with the legislative changes in 2008.

Tom Kimpel said he is totally comfortable with it being this resolution but if they want a separate order that he prepares and the Plan Commission approves that is fine.

Attorney Doll said he just wants it to conform to the State Statute so that someday down the road won't say who is the idiot lawyer representing the Plan Commission because it is supposed to be an order and it isn't an order.

Guy Gentry stated the Vice Chairman needs to sign it because he won't sign it.

Mrs. Rector stated someone will need to redo the resolution so there are signature blocks for the members who voted for it can sign it.

Tom Kimpel stated he could send her a new resolution.

Larry Taylor asked if they can just sign their names at the bottom.

Discussion ensued over when this would be presented to the Commissioners and how the members will be able to sign the document.

Larry Taylor asked if they can just draw four lines on the document and let them sign it.

Attorney Doll said he is worried if they ever decide to bond a sewer project or something and they have to present all of the authorization documents ....

Attorney Kimpel said they did all that with the Epworth project and everything was done for this exactly like the Epworth project. He said all the resolutions were presented to bond counsel and the transcript was approved.

Attorney Doll asked if they draw lines on those for the signatures to which Attorney Kimpel stated it was fine with him.

Mrs. Rector drew lines on the bottom of the resolution and the Board members signed the document.

Don Williams asked Guy Gentry if he would be willing to put his feelings about this into a letter to which Mr. Gentry said absolutely because it needs to come out of this Board's hands.

Attorney Doll stated he thinks the intent of this change is they envisioned a geographical change being made in the size, location, size or purpose of a TIF district and under those circumstances it probably a logical thing to do to have the Area Plan Commission look at in in comparison to the Comprehensive Plan. He stated unfortunately this doesn't have anything to do with that, this has to do with nothing but the capturing of tax and they don't differentiate in the statute. He said maybe they should.

Larry Taylor said every year the local legislators ask him if there are any economic development issues he would like brought up and so he would be happy to bring this up and some kind of letter from this Board and the Commissioners would be helpful in that.

#### **AMENDING ORDINANCES TO THE COMPREHENSIVE ZONING ORDINANCE:**

Mrs. Rector stated they discussed these ordinances last month and they told her to prepare them and advertise them for public hearing.

AN ORDINANCE TO AMEND ARTICLE II DEFINITIONS SECTION 2 TERMS DEFINED (GARAGE,PRIVATE) TO THE COMPREHENSIVE ZONING ORDINANCE FOR WARRICK COUNTY, INDIANA. *Advertised in the Boonville Standard November 3, 2011.*

The purpose of this ordinance to remove the limitation of maximum of 4 car capacity for private garages.

Mrs. Rector stated this will change the ordinance to allow someone to have as many car garage as they want as long as it meets the yard requirements. She stated currently the ordinance limits you to a four car capacity.

Attorney Doll asked why the County even cares how many cars someone has in their garage.

Brad Overton stated it isn't even the cares it is the doors and he could have a warehouse with just two doors.

Mrs. Rector stated they have to sign off on the permit that it will not exceed four vehicles no matter if it has one door.

Discussion ensued over the limits of weights and capacity and farm vehicles being exempt.

Ascertaining there were no more comments the President called for a motion.

Guy Gentry made a motion to recommend approval of this ordinance to the County Commissioners. The motion was seconded by Marlin Weisheit and unanimously carried.

AN ORDINANCE TO AMEND ARTICLE IV GENERAL PROVISIONS SECTION 5 NUISANCES OF THE COMPREHENSIVE ZONING ORDINANCE FOR WARRICK COUNTY, INDIANA. *Advertised in the Boonville Standard November 3, 2011.*

The purpose of this ordinance is to amend the definition of nuisance.

Attorney Doll stated the County ordinance now deals strictly with nuisances, it doesn't differentiate between a private nuisance and a public nuisance and he has long lobbied the Board they ought not to be in the business of enforcing litigation actions for private nuisances. He stated this adopts the general definition of a public nuisance right out of the State Statute. He stated this will have them only protecting entire neighborhoods or communities.

Discussion ensued over possible public and private nuisances.

Brad Overton questioned how many people have to complain in a neighborhood for it to be a public nuisance.

Morrie Doll stated two people could technically be a community.

Ascertaining there were no other comments from the Board the President called for a motion.

Larry Willis made a motion to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Brad Overton and unanimously carried.

AN ORDINANCE TO AMEND ARTICLE XXI DEVELOPMENT REGULATIONS SECTION 1 BASIC STANDARDS BY AMENDING SUBSECTION (e) TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA. *Advertised in the Boonville Standard November 3, 2011.*

The purpose of this ordinance is to set standards for ingress/egress easements for commercial subdivisions.

Mrs. Rector stated this is to prevent these easements from being a connector between two existing roadways as was the case in Nance Subdivision. She stated this will be an easement to go in to one or two businesses but it is not going to lead all the way through as a road; otherwise

you will have to plat it as a private road and build it to certain standards. She stated those standards are coming up later with another ordinance.

Guy Gentry stated they are addressing something they don't have yet.

Mrs. Rector stated they have approved two already and in talking to the County Engineer they are trying to get away from this and they want to make sure they protect the community.

Attorney Doll stated they used to have an ordinance that said you couldn't have access by an easement and then they relaxed that ordinance to allow for easements to be used but that general relaxation may have been too broad and let the easement go from one road to another and that might not be a good thing down the road if the County ever decides to make it a public road.

Guy Gentry asked if this ordinance can be passed without having passed the ordinances dealing with private streets.

Attorney Doll suggested they can table this one until they have acted on the others.

Guy Gentry stated he thinks it is a matter of clarification and this should be tabled until they rule on the other ordinances.

AN ORDINANCE TO AMEND ARTICLE XXIV ADMINISTRATION SECTION 2 IMPROVEMENT LOCATION PERMIT TO THE COMPREHENSIVE ZONING ORDINANCE FOR WARRICK COUNTY, INDIANA. *Advertised in the Boonville Standard November 3, 2011.*

The purpose of this ordinance is to no longer require an Improvement Location Permits for fences.

Mrs. Rector stated what this ordinance is doing is taking out the requirement of obtaining an Improvement Location Permit for a fence. She stated the Drainage Board/Commissioners feel it is not necessary. She stated all of the requests to be in the easements were being approved and it is more paper work for the office and it an expense to the property owners.

Attorney Doll stated most people didn't get the permits - Mr. Willis's company get permits but most don't - and they aren't inspected and they have never denied one, so why make them get permits.

Mrs. Rector stated the utility companies have never denied one either.

Guy Gentry stated they passed this ordinance originally for the Drainage Board and then they never denied them.

Ascertaining there were no other comments the President called for a motion.

Amanda Mosiman made a motion to recommend approval to the County Commissioners of this amending ordinance. The motion was seconded by Marlin Weisheit and unanimously carried.

**AMENDING ORDINANCES TO SUBDIVISION CONTROL ORDINANCE:**

AN ORDINANCE TO AMEND ARTICLE IV GENERAL REGULATIONS AND DESIGN SUBSECTION 2 STREETS SUBSECTION (9) MINIMUM STREET AND HIGHWAY RIGHT-OF-WAY WIDTHS BY ADDING PRIVATE STREET TO THE SUBDIVISION CONTROL ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA. *Advertised in the Boonville Standard November 3, 2011.*

The purpose of this ordinance is to set right of way widths for private streets.

Mrs. Rector stated this recommendation is from the County Engineer. She said the requirement for private streets will be a fifty foot right of way, not fifty feet of pavement or rock. She stated no matter what when you approve private streets eventually the people come back and want the Commissioners to take over maintenance of those streets and so this requires the same right of way width as any subdivision street that is a public street.

Attorney Doll stated it anticipates that if the County is asked to take the road over it will have a customary width so the County knows what it is dealing with as far as ditching and all the other things.

Larry Willis asked if that will eliminate them from selling outlots like in front of Walmart; they will have to put in a street.

Attorney Doll stated they could designate part of the parking lot as a street.

Mrs. Rector stated they can still do the easement for access or on a subdivision plat when they do a PUD with private streets, this still lets them have private streets but they have to show the fifty foot of right of way instead of like Victoria did with a road going to the middle of nowhere being twenty feet wide.

Ascertaining there were no other comments from the Board the President called for a motion.

Brad Overton made a motion to recommend approval to the Commissioners of this amending ordinance. The motion was seconded by Marlin Weisheit and unanimously carried.

AN ORDINANCE TO AMEND ARTICLE V STREET AND UTILITY IMPROVEMENTS SUBSECTION 4 MINIMUM STANDARDS FOR STREET AND HIGHWAY CONSTRUCTION SUBSECTION (2) STREETS AND HIGHWAYS SHALL BE PAVED TO THE FOLLOWING WIDTHS BY ADDING PRIVATE STREET TO THE SUBDIVISION CONTROL ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA. *Advertised in the Boonville Standard November 3, 2011.*

The purpose of this ordinance is to set minimum standards for private streets.

Attorney Doll stated the goal here is to give developers a break in private streets; not to hold them to the same expense and standards of a public street where the County assumes maintenance responsibilities at some time. He stated so again the County Engineer has recommended that the streets be twenty four feet in width but with a good base so should it ever be dedicated to the County in some future date they at least have a good portion of the improvement already installed.

Guy Gentry stated it makes a fair playing field as to what they are approving because one contractor could throw ashes down ten feet wide and call it a private street and someone else pour an eighteen foot wide pavement.

Attorney Doll stated and this would be big enough for school buses and fire trucks.

Guy Gentry stated the cross sections that will be required will also be basically the same as public streets but just narrower.

Mrs. Rector stated and they will have to turn in street plans with the subdivision plat and the County Engineer will review them.

Guy Gentry stated and this has been advertised and no one is here to discuss it and he thought there would be some developers and contractors here.

Mrs. Rector stated most of them build their roads to this width; they may not show the fifty feet of right of way.

Ascertaining there were no other comments from the Board the President called for a motion.

Brad Overton made a motion to recommend approval to the Commissioners of this amending ordinance. The motion was seconded by Amanda Mosiman and unanimously carried.

#### **AMENDING ORDINANCE TO THE COMPREHENSIVE ZONING ORDINANCE:**

AN ORDINANCE TO AMEND ARTICLE XXI DEVELOPMENT REGULATIONS SECTION 1 BASIC STANDARDS BY AMENDING SUBSECTION (e) TO THE COMPREHENSIVE ZONING ORDINANCE IN EFFECT FOR WARRICK COUNTY, INDIANA. *Advertised in the Boonville Standard November 3, 2011.*

The purpose of this ordinance is to set standards for ingress/egress easements for commercial subdivisions.

The President stated this ordinance was tabled earlier in regards to the definition of a private street and called for a motion.



Brad Overton made a motion to recommend approval to the Commissioners of this amending ordinance. The motion was seconded by Mike Moesner and unanimously carried.

### **OTHER BUSINESS:**

**Formal Complaint:** Kirby Broadview Farms, Inc., SR 62 Semi-trailer being used as off premise billboard without permits.

Mrs. Rector stated she assumes they all saw the mayoral candidate billboard out on the highway on SR 62, or she should say the semi-trailer with the sign on it, which by definition is a billboard sign. She said there was a complaint filed about it and a letter was sent to Mr. Kirby who owns the property. She said he came into the office and basically said he wasn't going to get a permit unless they make all the others get a permit. She said she isn't aware of any other signs in violation and he couldn't tell her but again said he wasn't getting a permit. Mrs. Rector stated so he didn't get a permit and she sent him another letter telling him it would be coming to this meeting which is of course after the election and the trailer and sign are gone.

Mrs. Rector said she wants to bring this up because she doesn't want to be used in every election. She said they made Pat Brooks move her trailer/billboard to commercial property a few years ago and then get a permit and she wants to treat everyone fairly. She said if people get to saying "well the Plan Commission will take two months to do anything anyway" then they will just put them up because it doesn't matter what they say. She said staff goes through all the time and trouble of writing the letters and sending the inspector out there before it ever gets to the Board and they either need to take it out of the ordinance or ... She stated there used to be a provision in the ordinance but when Mr. Shively was the attorney he said it could be taken out and put in the Fee Schedule which says a violation fee is \$100 and if an Improvement Location Permit is not acquired the following work day an additional fee of \$100 per day until a permit is obtained or it is removed.

Mrs. Rector stated it either needs to be taken out or there needs to be some teeth to it so if she says something isn't removed by a certain time they will be posted and fined \$100 per day until permitted or moved.

Attorney Doll stated the problem he has is there is nothing in the ordinance that allows them to administratively fine anybody \$100 a day. He said what he has asked Mrs. Rector to do is to turn to their Improvement Location Permits and to add some language and bring it to the Board to adopt that says the Plan Commission may adopt as part of its fee schedule an administrative fine for failing to have a permit. He said once that is done then he has an ordinance they can enforce. He said on the other hand he is real sensitive to political free speech and what the courts have said about it and there are all kinds of restrictive covenants that preclude yard signs and generally the courts have said if somebody says it is free speech and they are asserting their civil rights to put a yard sign in their yard.

Mrs. Rector stated that yard signs are exempt from their zoning.

Attorney Doll stated he knows that but the problem he has is that while this isn't a yard sign it is much bigger, that it is mobile and not attached to the ground – it isn't like someone built a billboard.

Several members spoke at once.

Mrs. Rector stated she doesn't see the difference between a semi-trailer with a sign that says "Vote for Guy Gentry" or one that says "Buy Plants at Combs Landscaping".

Attorney Doll stated he thinks those two may be similar but he is just worried that one is cloaked with more leeway because it deals with a political process and if you get in court to try to enforce this he would have to sue the landowner because he doesn't know who owns the truck.

Mrs. Rector stated of course they would sue the landowner and just so he knows, they sent letters to all of the trailer rental places to let them know of the ordinance when it was passed. She stated this really was pushed by the sign companies. She said her thing is not just for political signs or these semi-trailers, this is for anybody that doesn't get a permit for any structure. She said why it was put in originally was because builders don't care and if it was a pretty day they would start putting their footers in and come in maybe a week later to get their permits. She said this was before they had inspectors who actually went out.

Brad Overton commented about pickup trucks with signs in the back sitting in local parking lots. He asked if that falls under this as well.

Attorney Doll stated if they don't target this strictly to signs but they go back to the Improvement Location Permit and say if you have to get a permit and you don't you may be subject to an administrative assessment or fine and reference it to this. He said then he thinks it can be enforced but just putting it in the rules and not being in the ordinance he doesn't think it is worth anything.

Mrs. Rector stated there needs to be an answer to her on what to do because next year is going to be big election year and she needs to know what to do in order to do her job.

Brad Overton commented he is confused and asked why the semi-trailer was not in compliance.

Mrs. Rector stated he didn't get an Improvement Location Permit to locate it there as a billboard and then several members spoke at once.

Mrs. Rector again stated he could have obtained a permit because the property is zoned commercial.

Brad Overton stated so the issue is she can't enforce this in a timely manner.

Guy Gentry stated not to pick on Combs Landscaping but that was what precipitated this ordinance a few years ago. He said they had semis sitting at several different locations on private property and so the ordinance came about that they had to be on commercial property or he was actually doing work at that location to be advertising in the manner and size of the sign he had there. He said then it spilled over into political because it is a cheap billboard.

Brad Overton said so to save Mrs. Rector, as long as she is following the steps in the ordinance, even if she can't get it moved within the thirty days she has gone through the proper steps.

Attorney Doll stated the ordinance doesn't have that step of they may fine them if they don't get a permit and it needs it. He said secondly Mrs. Rector is asking for direction from the Board if this happens next year does she hold to her guns and say the ordinance says they have to have a permit and if they don't get one in ten days they will be fined or do they want her to bring each one of them to the Board.

Mrs. Rector said it could be someone who appointed someone to this Board. She said she hates getting into this political part of it. She said political yard signs are exempt on private property but when you get into off premise signs it says a semi-trailer is a billboard.

Attorney Doll stated the Board should think about this and he would encourage them to take it under advisement until next month. He suggested he and Mrs. Rector could draft some reference language in the ordinance that says if you don't have an Improvement Location Permit it could be \$100 a day until you get one.

Marlin Weisheit said he is all for that but he is a little more flexible on the political signs and he doesn't really have a problem with what was done out there because it was his property and in a sense he hates to restrict people from freedom of speech but it was a violation.

Mrs. Rector said the complaint ended up being from a supporter of the opponent and so the office gets stuck in the middle and then she is the bad guy when she has to write the letter.

Guy Gentry asked how much the permit costs.

Mrs. Rector stated a commercial permit is \$100 and it has to be on commercially zoned property.

Discussion ensued over the size of exempt signs. It was the consensus of the Board to table this item until the next meeting.

#### **ATTORNEY BUSINESS:**

None

#### **EXECUTIVE DIRECTOR BUSINESS:**

Mrs. Rector stated for over five years they have been experiencing sewer gas coming into the office and finally the County is going to run a smoke test to determine where it is coming from. She stated the man from Hydromax came into the office the other day and he traced it to the upstairs bathrooms that run into pipes that are in the back office room walls. She said they are thinking the cast iron pipes have cracks and the gas is escaping into the dropped ceiling and coming into the front office through the holes in the ceiling.

Marlin Weisheit said it is terrible to have to put up with that.

Mrs. Rector stated thanks to Commissioners Weisheit and Williams they are getting some action.

Being no other business the meeting adjourned 7:40 p.m.

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Guy Gentry

ATTEST:

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Sherri Rector, Executive Director